2005

David J. Allen, an individual v. Thomas K. Hall, an individual, and Homecomings Financial Network, Inc., a Delaware corporation, Chad R. Moore, an individual; and Melanie S. Moore, an individual : Reply Brief

Utah Court of Appeals

Ronald G. Russell; Matthew J. Ball; Parr Waddoups Brown Gee & Loveless; Attorneys for Intervenors Chad R. Moore & Melanie Moore .
James G. Swensen Jr.; Swensen & Andersen; attorneys for petitioner.

IN THE SUPREME COURT
STATE OF UTAH

DAVID J. ALLEN, an individual, Petitioner, v. THOMAS K. HALL, an individual, and HOMECOMINGS FINANCIAL NETWORK, INC., a Delaware corporation, Respondents, and CHAD R. MOORE, an individual; and MELANIE S. MOORE, an individual, Intervenors.	Supreme Court No. 20050338-SC

REPLY BRIEF OF PETITIONER TO BRIEF OF INTERVENORS

Review of the Opinion of the Utah Court of Appeals Entered January 21, 2005
Pursuant to Writ of Certiorari Granted August 9, 2005

Ronald G. Russell, USB No. A4134
Matthew J. Ball, USB No. A9414
PARR WADDOUPS BROWN GEE & LOVELESS, P.C.
185 South State Street, Suite 1300
Salt Lake City, Utah 84111
Telephone: 801-532-7840
Attorneys for Intervenors Chad R. Moore & Melanie S. Moore

James G. Swensen, Jr., USB No. A3874
SWENSEN & ANDERSEN PLLC
136 South Main Street, Suite 318
Salt Lake City, Utah 84101
Telephone: 801-364-7500
Telecopier: 801-364-7510
Attorneys for Petitioner David J. Allen

IN THE SUPREME COURT
STATE OF UTAH

DAVID J. ALLEN, an individual, Petitioner, v. THOMAS K. HALL, an individual, and HOMECOMINGS FINANCIAL NETWORK, INC., a Delaware corporation, Respondents, and CHAD R. MOORE, an individual; and MELANIE S. MOORE, an individual, Intervenors.	Supreme Court No. 20050338-SC

REPLY BRIEF OF PETITIONER TO BRIEF OF INTERVENORS

Review of the Opinion of the Utah Court of Appeals Entered January 21, 2005
Pursuant to Writ of Certiorari Granted August 9, 2005

Ronald G. Russell, USB No. A4134
Matthew J. Ball, USB No. A9414
PARR WADDOUPS BROWN GEE & LOVELESS, P.C.
185 South State Street, Suite 1300
Salt Lake City, Utah 84111
Telephone: 801-532-7840
Attorneys for Intervenors Chad R. Moore & Melanie S. Moore

James G. Swensen, Jr., USB No. A3874
SWENSEN & ANDERSEN PLLC
136 South Main Street, Suite 318
Salt Lake City, Utah 84101
Telephone: 801-364-7500
Telecopier: 801-364-7510
Attorneys for Petitioner David J. Allen

Thomas K. Hall
448 East Golden Pheasant
Draper, Utah 84020
Respondent - Pro Se

Bruce J. Nelson, Esq.
NELSON CHRISTENSEN & HELSTEN
68 South Main Street, Suite 600
Salt Lake City, Utah 84101
Attorneys for Respondent Homecomings
Financial Network, Inc.

Sarah Satterfield Allen
130 Glenburnie Lane #1-104
Durham, North Carolina 27704-3072
Third-Party Defendant - Pro Se

TABLE OF CONTENTS

TABLE OF AUTHORITIES

UTAH CASES

OTHER CASES

STATUTES AND RULES

ARGUMENTS

Chad R. Moore and Melanie S. Moore filed their brief on October 14, 2005 as intervenors in this court's review of the Opinion of the Utah Court of Appeals entered January 21, 2005 pursuant to a Writ of Certiorari granted August 9, 2005. David J. Allen, the Petitioner, herein files his response to the brief of the Moores.

The Moores have adopted the arguments of Thomas K. Hall, the Respondent in this action, inasmuch as they find themselves in the same situation having ignored the Utah recording statute.

I. THE RECORDING STATUTE IS NOT DEFEATED BY EQUITABLE DEFENSES.

The Court of Appeals ruled that Mr. Allen had a right of reversion in the Flanders Property which was described in the 1993 quitclaim deed to Ms. Satterfield and which became a fee simple in July 1999 when Ms. Satterfield moved to North Carolina. The Court of Appeals also ruled that Mr. Hall had notice of the right of reversion pursuant to Utah Code Ann. §57-3-102 and that this notice destroyed any equitable grounds upon which Mr. Hall might claim to defeat Mr. Allen's right to the Flanders Property.

The Moores argue that the Court of Appeals should be reversed because equitable defenses can defeat the recording statute and Mr. Allen's claim to the Flanders Property. The Moores are not entitled to make this argument at this stage of the proceedings, and even if this court allows them leave to do so, the ruling of the Court of Appeals is the correct statement of the law.

A. Intervenors May Not Challenge the Decision of the Court of Appeals Quieting Title to the Flanders Property in Mr. Allen.

The Court of Appeals issued its opinion in this matter on January 21, 2005. Mr. Allen filed his Petition for Writ of Certiorari with this court on April 11, 2005. The Petition for Writ of Certiorari was granted on August 9, 2005 as to the following issues: (i) Mr. Allen's obligation to Mr. Hall under the Utah Occupying Claimants Act, (ii) Mr. Allen's obligation to Homecomings under the Decree of Divorce, and (iii) Mr. Allen's claim against Mr. Hall and Homecomings for unjust enrichment.

The Moores filed their Motion for Leave to Intervene with this Court on May 13, 2005 and their Motion was granted on October 11, 2005.

This court's cases have treated postjudgment motions to intervene unfavorably, articulating a "general rule" that "intervention is not to be permitted after entry of judgment." Jenner v. Real Estate Servs., 659 P.2d 1072, 1074 (Utah 1983).

The Court of Appeals decided the issue of title to the Flanders Property on January 21, 2005 and determined that title to the Flanders Property be quieted in Mr. Allen. This court did not grant certiorari on the issue of ownership of the Flanders Property, nor did the Moores raise that issue in their Motion for Leave to Intervene. Therefore, the issue of ownership of the Flanders Property has been determined by a final judgment and intervention by the Moores on this issue should not be allowed.

Exceptions to the court's general rule on postjudgment intervention have been made only where an applicant for intervention makes a "strong showing of entitlement and justification, or such unusual or compelling circumstances as will justify the failure to seek intervention earlier." Id (footnotes omitted). This exception standard is far beyond the reach

of the Moores. On or about November 26, 2002, Mr. Allen caused a Lis Pendens to be recorded on the Flanders Property in the offices of the Salt Lake County Recorder as entry number 8434404, book 8690, page 9042. The Lis Pendens gives notice of the pendency of Mr. Allen's appeal of the Third District Court ruling regarding the Flanders Property. The Moores did not attempt to purchase the Flanders Property from BankOne as Trustee for Homecomings until approximately July 28, 2004. Consequently, at all relevant times the Moores had notice pursuant to Utah Code Ann. §57-3-102 of Mr. Allen's right to a reversionary interest in the Flanders Property and his appeal to enforce those rights. Thus, there are no unusual or compelling circumstances as a basis for the Moores to raise the issue of ownership at this time.

The Moores have no standing to challenge or object to Mr. Allen's ownership of the Flanders Property as decided by the Utah Court of Appeals and therefore no basis upon which to intervene in this appeal.

Further, Utah Rule of Civil Procedure 24 requires that a motion to intervene "be accompanied by a pleading setting forth the claim or defense for which intervention is sought." Utah R. Civ. P. 24(c). The Moores' Motion for Leave to Intervene was improper because it was not accompanied by any pleading identifying an intent to intervene on the issue of Mr. Allen's title to the Flanders Property. Absent any such pleading, the Moores' intervention in this case should be limited to the specific issues upon which the writ of certiorari was granted.

B. The Court of Appeals Correctly Applied the Recording Statute.

The Court of Appeals ruled that Mr. Hall had notice of the right of reversion pursuant to Utah Code Ann. §57-3-102 and that this notice destroyed any equitable grounds upon which Mr. Hall might claim to defeat Mr. Allen's right to the Flanders Property. This is the correct statement of the law. Amazingly, the Moores are reduced to making the same arguments made by Mr. Hall to the trial court because the Moores, like Mr. Hall, apparently ignored the recording statute when they attempted to purchase the Flanders Property and do not want to be responsible for their own actions. Mr. Hall and the Moores have no one to blame but themselves when the Flanders Property reverts to Mr. Allen.

If this court determines to allow the Moores to challenge the judgment of the Court of Appeals quieting fee simple title to the Flanders Property in Mr. Allen in July 1999 , then the Moores' challenge must be denied for the same reasons that the Court of Appeals reversed the trial court.

The Moores adopt the theme of the trial court in attempting to shift the blame for Mr. Hall's loss, and the subsequent loss of the Moores, to Mr. Allen. The Moores do so by asserting (i) that Mr. Allen had a duty to notify Mr. Hall of the right of reversion and (ii) that equitable defenses defeat the notice given under the recording statute.

The Moores and the trial court assert that Mr. Allen knew that Mr. Hall would mortgage and improve the Flanders Property. There is no evidence to support any such assertion and it is error. While Mr. Allen became aware that Ms. Satterfield had sold the Flanders Property to Mr. Hall, that knowledge alone cannot be construed to attribute knowledge of actual refinancing or actual improvement to the Flanders Property. Indeed,

even if Mr. Allen knew that Mr. Hall might mortgage the Flanders Property, Mr. Allen would have also reasonably believed that any mortgagee of the Flanders Property would have knowledge of Mr. Allen's right of reversion and would know that any security interest claimed in the Flanders Property would be subject thereto. Likewise, even if Mr. Allen knew that Mr. Hall might improve the Flanders Property, Mr. Allen would reasonably believed that Mr. Hall would have knowledge that his improvements, like his title to the Flanders Property, would be subject to Mr. Allen's right of reversion.

Mr. Allen had no knowledge that Mr. Hall was improving the Flanders Property. Mr. Allen entered the Flanders Property a few days after it was sold to Mr. Hall in January 1998 to retrieve some personal effects. Mr. Allen has not entered the Flanders Property since then. There was no evidence offered that Mr. Hall commenced his improvements to the Flanders Property prior to Mr. Allen's entry thereon nor that Mr. Hall made any improvements to the Flanders Property after title reverted to Mr. Allen in July 1999.

The Moores and the trial court are wrong in asserting Mr. "Allen's silence, delay and inactivity to be intentional and designed to enhance the value and equity of the [Property]" to Hall's detriment. First, there was no evidence given that Mr. Allen knew that Mr. Hall was not aware of the right of reversion. The trial court's findings in this regard are in error and unsupported by the evidence. Second, the Moores and the trial court seem to attach some weight to the trial court's finding that Mr. Allen "failed to initiate a lawsuit to claim the Property for approximately two years." Mr. Hall purchased the property from Ms. Satterfield in January 1998. Ms. Satterfield moved from the state of Utah in July 1999, at which time

the Flanders Property automatically reverted to Mr. Allen. Mr. Allen notified Mr. Hall of the right of reversion on or about January 4, 2000 and when the matter could not be resolved, Mr. Allen commenced the lawsuit in May 2000. Prior to July 1999, Mr. Allen had no present legal claim or right against Mr. Hall or the Flanders Property. However, the trial court seems to think that Mr. Allen should have taken some action immediately following the sale to Mr. Hall. The trial court's finding in this regard is in error and unsupported by the evidence.

The Moores' claim that equitable defenses defeat the recording statute is based on the obvious flaw of Mr. Hall's claim that he did not know about the right of reversion. If Mr. Hall knew, or should have known about the right of reversion, then the maxim of "unclean hands" would preclude him from asserting equitable defenses. As the Court of Appeals found, Mr. Hall had knowledge under the recording statute of the right of reversion and therefore is precluded from asserting equitable defenses.

The Moores' attempt to show that Mr. Hall's claimed equitable defenses should be sufficient to defeat the recording statute is curious inasmuch as the Moores' defense is being provided by the insurer of their title, whose entire industry is based on the certainty of and reliance on the recording statutes. Indeed, if the court were to accept the Moores' argument, Utah's recording statute would be fundamentally weakened and the status of real property titles in Utah would be set in turmoil.

Mr. Allen had no duty to give notice to Mr. Hall or anyone else of the right of reversion.

Mr. Allen has done nothing "unjust, inequitable or intolerable." In fact Mr. Allen's only act in question here is entering into a property settlement agreement with his former spouse and then attempting to enforce that agreement. Mr. Allen did not suggest to Mr. Hall or encourage him to refinance the Flanders Property. Indeed, there is no evidence that Mr. Allen knew that Mr. Hall was refinancing the Flanders Property. Mr. Allen did not suggest to or encourage Mr. Hall to improve the Flanders Property. Indeed, there is not evidence that Mr. Allen knew that Mr. Hall was improving the Flanders Property.

For the foregoing reasons, the Moores claim that equitable defenses defeat the recording statute should be denied.

II. MR. ALLEN IS RESPONSIBLE ONLY FOR THE DEBT WHICH WAS SECURED BY THE FLANDERS PROPERTY WHEN MR. ALLEN CONVEYED THE FLANDERS PROPERTY TO MS. SATTERFIELD.

It is settled law in real property that the holder of a terminable interest in real property may not affect the rights of a remainderman without the written consent of the remainderman. The same holds true in this case. Neither Ms. Satterfield, Mr. Hall, Homecomings nor the Moores may affect Mr. Allen's right of reversion to the Flanders Property without his written consent. It is also settled law in real property that a grantor may not convey more than his interest in real property. Thus, Ms. Satterfield conveyed her fee simple title subject to a right of reversion to Mr. Hall. Mr. Hall conveyed a security interest in his fee simple title subject to a right of reversion to Homecomings. And Homecomings conveyed its fee simple title subject to a right of reversion to the Moores. Consequently, when the Flanders Property reverted to Mr. Allen in July 1999, all interests of Ms. Satterfield, Mr. Hall, Homecomings and the Moores terminated.

The trial court was loath to leave Mr. Hall responsible for ignoring the recording statute so it attacked the Decree of Divorce between Mr. Allen and Ms. Satterfield in an attempt to create a remedy for Mr. Hall and Homecomings.

A. The Decree of Divorce is a Property Settlement Between Mr. Allen and Ms. Satterfield.

The Moores argue that if Mr. Allen is entitled to the Flanders Property, he must pay Homecomings the amount of the indebtedness on the Flanders Property as of July 1999, the date the Property reverted to Mr. Allen. The Moore's argument is based solely on an interpretation of the Decree of Divorce and not on any principles of real property law.

Mr. Allen has argued in his principal brief the reasons why the Decree of Divorce does not create any obligation for Mr. Allen to satisfy the debt owed by Mr. Hall to Homecomings. In addition, Mr. Allen responds further to issues raised by the Moores.

Mr. Allen purchased the Flanders Property in his own name and he alone signed the mortgage note to finance the purchase of the Flanders Property. When Mr. Allen and Ms. Satterfield divorced, the Flanders Property was one of the assets of the marital estate. The marital value of the Flanders Property at the time of the divorce was its equity, i.e. fair market value at the time of the divorce less the mortgage loan balance at the time of the divorce. This was further subject to any future increase in the fair market value of the Flanders Property and to any future amortization of the mortgage loan balance.

The Decree of Divorce must be interpreted as the agreement between two parties, Mr. Allen and Ms. Satterfield, and not distorted to create a remedy for Mr. Hall and Homecomings.

Any confusion on the part of the trial court and the Court of Appeals regarding what, if any, debt Mr. Allen would be responsible for after the Flanders Property reverted to him could have been readily clarified from a reading of the final sentence of Paragraph 10 of the Decree of Divorce which states that "[t]hese provisions are to ensure that the children have a suitable residence during their minority, are structured to provide a benefit to the defendant [Satterfield] if she shall continue to reside in Salt Lake City, Utah, in the form of all of the equity in said home, and a detriment if she shall move, in the form of the loss of one-half of the equity."

If Ms. Satterfield satisfied the conditions of the right of reversion, all of the Flanders Property would be hers. If, on the other hand, Ms. Satterfield were to move, she would forfeit half of the value of the Flanders Property. If the trial court's interpretation of the Decree of Divorce is accepted, Ms. Satterfield could defeat the intent of the Decree of Divorce by refinancing and taking all value out of the Flanders Property. This could not have been the intent of Mr. Allen and Ms. Satterfield because their agreement would have been rendered a nullity. The Decree of Divorce is to be interpreted to consistent with the express language and the intent of the parties, Mr. Allen and Ms. Satterfield. It makes no sense to structure a property settlement in a marital dissolution and then read the provision as anything other than its intended purpose.

The only reasonable interpretation of the Decree of Divorce is that if the Flanders Property reverts to Mr. Allen, he services the debt until it is sold and then divides the net proceeds equally with Ms. Satterfield. The debt which he is to service and satisfy from proceeds of the Flanders Property is the amortized balance owed of the debt secured by the

Flanders Property at the time of the Decree of Divorce and on which Mr. Allen was obligated.

Therefore, the Court of Appeals should be reversed and title to the Flanders Property should be quieted in Mr. Allen subject only to the amortized balance of the debt secured by the Flanders Property at the time of the Decree of Divorce.

B. The Lower Courts Erred in Determining That Mr. Allen Takes the Flanders Property Subject to Any Debt Existing at the Time of the Reversion and Not Subject Only to Debt Existing at the Time of the Decree of Divorce.

The Moores basically make the same arguments in the corresponding section of their brief which they make in the preceding section and Mr. Allen raises the same objections to those arguments.

III. MR. ALLEN HAS NO OBLIGATION TO PAY FOR MR. HALL'S IMPROVEMENTS TO THE FLANDERS PROPERTY.

The Moores argue that if Mr. Allen is entitled to the Flanders Property, he must pay for Mr. Hall's improvements to the Flanders Property. The Moores base their claim alternatively upon the Utah Occupying Claimants Act and upon a theory of unjust enrichment.

The Moores would have this court find that the holder of a terminable interest in real property is entitled to be compensated for any improvements made to the real property when the interest is terminated by operation of law. This is clearly not the intention of the Utah Occupying Claimants Act nor have the Moores made their case on the theory of unjust enrichment.

The Moores ignore the recording statutes and argue that Mr. Allen breached a duty to inform Mr. Hall of the right of reversion. The right of reversion was duly recorded and gave notice to all the world, except seemingly for Mr. Hall and the Moores. Mr. Allen had no duty to inform Mr. Hall or anyone else of the right of reversion.

The Court of Appeals held that under the Utah Occupying Claimants Act Mr. Allen must pay for the improvements of Mr. Hall. Mr. Allen petitioned for a writ of certiorari from this court to review the holding of the Court of Appeals and this court granted the writ on the issue of "whether an occupant who holds title to property subject to a reversionary interest – as reflected by the 1993 deed in this case – is entitled to compensation for improvements under the Utah Occupying Claimants Act and, if so, whether the court of appeals properly determined the value of those improvements."

A. The Utah Occupying Claimants Act Does Not Require Mr. Allen to Pay for Mr. Hall's Improvements to the Property.

There are three requirements under the Utah Occupying Claimants Act, all of which must be met to support a recovery under the Act. The Moores have advanced their arguments in support of each of these requirements having been met. The issue before the court can be summarized as the scope and intent of the Utah Occupying Claimants Act.

(1) Mr. Hall Does Not Have Color of Title.

The Moores assert the Mr. Hall had "color of title." They argue that Mr. Allen has wrongly used the common law definition of "color of title" and ask this court to consider the statutory definition as if it were somehow different from the common law definition.

According to the Utah Occupying Claimants Act,

> Any person has color of title who has occupied a tract of real estate by himself, or by those under whom he claims, for the term of five years, or who has occupied it for less time, if he, or those under whom he claims, have at any time during the occupancy with the knowledge or consent, express or implied, of the real owner made any valuable improvements on the real estate....

Utah Code Ann. §57-6-4(2)(a). It is Mr. Allen's position that this definition of "color of title" is no different than the common law definition and therefore all of the arguments made in his earlier brief are incorporated herein by reference.

The statutory definition distinguishes between the occupant of real property and the real owner of real property. The occupying claimant is not the real owner of the real property. This is consistent with the common law definition in that the person claiming "color of title" is not the real owner.

At the time the improvements were made, Mr. Hall was both the occupant of the Flanders Property and the real owner of the Flanders Property. Therefore, under the Utah Occupying Claimants Act, he has no claim for improvements against anyone but himself.

The Moores boldly claim that Mr. Allen cannot "genuinely contest the fact that he, at least impliedly knew of or consented to Hall's making such improvements [to the Flanders Property]." This is wrong. There is no evidence that Mr. Allen had any knowledge of Mr. Hall's improvements to the Flanders Property. The Moores apparently base their claim on the evidence that Mr. Allen entered the Flanders Property two days after the sale to Mr. Hall to retrieve personal effects. The Moores surmise from this that Mr. Allen "must have known that, as the new owner, Hall would improve the Property." Again, this is wrong and a claim not supported by any evidence.

The Moores base their argument on the statutory definition of "color of title" arguing that Mr. Hall occupied the property with the knowledge and consent of the "real owner" Mr. Allen. First, the statutory definition of "color of title" differentiates between an occupant and the real owner. The Moores' erroneous presumption here is that Mr. Hall was the occupant and that Mr. Allen was the "real owner." In truth, Mr. Hall was the occupant and the real owner in fee simple subject to Mr. Allen's right of reversion. No one has argued that Mr. Allen became the real owner of the Property until Ms. Satterfield left the state of Utah in July 1999. Further, no evidence has been offered that any of the improvements were made to the Flanders Property after July 1999. Therefore, Mr. Hall did not have color of title to the Flanders Property while he was making the improvements thereto.

(2) Mr. Hall's Improvements to the Flanders Property Were Made While He Was the Occupant and Real Owner of the Property.

Mr. Hall made improvements to the Property. A claimant under the Utah Occupying Claimants Act must make valuable improvements on the real estate. Utah Code Ann. §57-6-1. The Utah Occupying Claimants Act further requires that the complaint of the party claiming under that Act "*must* [emphasis added] set forth the grounds on which the defendant seeks relief, stating as accurately as practicable the value of the real estate, exclusive of the improvements thereon made by the claimant or his grantors, and the value of such Improvements." Utah Code Ann. §57-6-2. Respondent Hall's Amended Answer and Amended Counterclaim did neither and therefore his pleading was defective and his claim should be denied. [Record at 275]

"The issues joined thereon must be tried as in law actions, and the value of the real estate and of such improvements must be separately ascertained on the trial." Utah Code Ann. §57-6-2. Neither the trial court nor the court of appeals determined separately the value of the real estate, exclusive of any improvements, or the separate value of such improvements.

Thus, based upon Respondent Hall's failure to meet the foregoing requirements of the Utah Occupying Claimants Act, there can be no finding of valuable improvements made to the Property.

(3) Mr. Hall Did Not Make His Improvements to the Flanders Property in Good Faith.

Mr. Allen has explained in his brief why Mr. Hall does not meet the necessary component of good faith under the Utah Occupying Claimants Act. The Moores counter with language from two of the cases cited by Mr. Allen in his brief to show that a good faith belief or a reasonable and honest belief of ownership is sufficient to satisfy the good faith requirement. See Jeffs v. Stubbs, 970 P.2d 1234, 1242 (Utah 1998); Ute-Cal Land Dev. Corp. v. Sather, 645 P.2d 665, 667 (Utah 1982). What the Moores overlook is that these cases, and indeed every other case which applies the Utah Occupying Claimants Act, deal with fact situations in which the occupants are not the real owners of the property. In this case, Mr. Hall is both the occupant and the real owner of the Flanders Property. As the real owner, Mr. Hall had constructive notice of Mr. Allen's right of reversion and so made the improvements subject to that right. This precludes Mr. Hall from making a claim that he

made the improvement thinking the he would benefit from them beyond the term of his estate and title in the Flanders Property.

Thus, Mr. Hall does not meet any of the three requirements for recovery under the Utah Occupying Claimants Act and the trial court and Court of Appeals erred in finding otherwise.

B. Mr. Allen Was Not Unjustly Enriched by the Termination of Mr. Hall's Estate in the Flanders Property.

(1) an Unjust Enrichment Claim Cannot Be Raised at this Stage of the Proceedings.

The Moores attempt to expand the scope of this court's review of the Court of Appeals finding concerning the Utah Occupying Claimants Act by asserting an alternative claim for unjust enrichment as a basis for Mr. Hall's recovery if he is denied under the Utah Occupying Claimants Act. This claim is beyond the scope of the Writ of Certiorari granted by this court. For this and the reasons stated in I.A. above, the Moores claim that Mr. Allen is obligated to pay for Mr. Hall's improvements under a theory of unjust enrichment should be denied.

(2) The Recording Statute Precludes Mr. Hall's Claim of Unjust Enrichment.

The Court of Appeals held that the recording statute applies and therefor the equitable remedies are not available.

(3) Mr. Allen Was Not Unjustly Enriched by Mr. Hall.

The Moores have identified the three elements necessary to support a claim for unjust enrichment. Desert Miriah, Inc. v. B & L Auto, Inc., 2000 UT 83, ¶ 13, 12 P.3d 580.

First, there must be a benefit conferred on one person by another. While Mr. Hall submitted evidence of approximately $52,000 of improvements to the Flanders Property, all of the improvements were made while Mr. Hall was the owner of the Flanders Property and before the Flanders Property reverted to Mr. Allen. Thus, at the time the improvements were made to the Flanders Property, there was no intent that they would benefit anyone but Mr. Hall, the owner of the Flanders Property. The improvements to the Flanders Property did not confer a benefit to Mr. Allen.

By analogy, improvements to real property under a lease become the property of the landlord upon termination of the lease without compensation to the tenant. Also, improvements made to real property by a life tenant become the property of the remainderman without compensation to the life tenant or his heirs. The same reasoning should apply in this instance. Improvements made to the Flanders Property by Mr. Hall become the property of Mr. Allen upon reversion of the Flanders Property to him, without compensation to Mr. Hall. Mr. Hall attempts to circumvent the law by claiming that he is somehow protected by his ignorance in not knowing about Mr. Allen's right of reversion. But he should not be allowed to do so. The Moores fail to meet this prong of the unjust enrichment test.

Second, the conferee [Mr. Allen] must appreciate or have knowledge of the benefit. If goes without saying that this knowledge must exist at the time the benefit is conferred and does not apply to knowledge acquired at some later date. The Moores assert that Mr. Allen knew of Mr. Hall's improvements to the Flanders Property "for years." There is no evidence to support this assertion. Mr. Allen did not learn of Mr. Hall's improvements to the Flanders

Property until Mr. Hall filed his counterclaim alleging the improvements. Therefore, the improvements were not made with the appreciation, knowledge or consent of Mr. Allen and the Moores fail to meet this prong of the unjust enrichment test.

Finally, there must be an acceptance or retention by the conferee [Mr. Allen] of the benefit under such circumstances as to make it inequitable for the conferee to retain the benefit without payment of its value. Any benefit to the Flanders Property which resulted from Mr. Hall's improvements transferred to Mr. Allen when the Flanders Property reverted to him by operation of law, through no action of his own and with knowledge to everyone. While it may be unfortunate that Mr. Hall did not have the use and enjoyment of his improvements for a longer time, it is not inequitable for the Flanders Property to have reverted to Mr. Allen, together with the improvements. Therefore, the Moores fail to meet this prong of the unjust enrichment test.

Even if this court were inclined to consider the Moores' unjust enrichment claim, the Moores have not satisfied the requirements of such a claim and therefore it should be denied. Further, for the same reasons that the Court of Appeals found that Mr. Hall's equitable defenses do not defeat the recording statute, this court should find that Mr. Hall does not have a claim for unjust enrichment.

IV. MR. ALLEN IS ENTITLED TO A HEARING ON HIS CLAIM FOR UNJUST ENRICHMENT.

Petitioner Allen claimed, and the court of appeals ultimately decided, that the Flanders Property automatically reverted to him on or about July 15, 1999. As the owner of the

Flanders Property, Mr. Allen has been denied the use and enjoyment of the Flanders Property since July 1999, without compensation from Mr. Hall, Homecomings or now the Moores.

The trial court denied Mr. Allen's claim for the unjust enrichment of Mr. Hall and Homecomings. The trial court made no findings of fact or conclusions of law, one way or the other, respecting this claim of Mr. Allen. However, consistent with the trial court's ruling that Mr. Allen had no interest in the Property, the trial court likely considered Mr. Allen's claim for restitution of unjust enrichment a nullity.

Mr. Hall testified that subsequent to July 15, 1999 and until the date of trial he personally occupied the Property for part of the time and rented the Property for part of the time. Respondent Hall testified that the fair market rental of the Property was between $1,200.00 per month and $1,400.00 per month. Record at 642-643.

Consequently, the denial of Petitioner Allen's claim for restitution of unjust enrichment must also be reversed and considered.

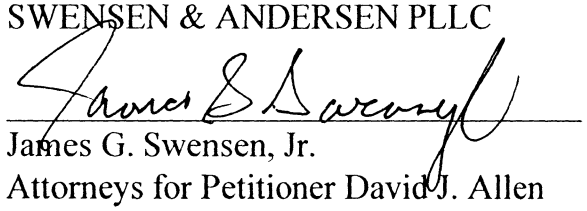
CONCLUSION

Based upon the foregoing, Petitioner Allen asks this court (i) to deny the Moores' request to reverse the Court of Appeals' ruling that the Flanders Property reverted to Mr. Allen on July 15, 1999; (ii) to reverse the Court of Appeals' ruling that Respondent Hall is entitled to recovery under the Utah Occupying Claimants Act or, if it is not inclined to do so, to reverse the Court of Appeals' ruling that the Utah Occupying Claimants Act was properly applied to determine the amount of the recovery to which Mr. Hall is entitled; (iii) to reverse the Court of Appeals' ruling that Mr. Allen is responsible for all indebtedness on the Flanders Property existing at the time of the reversion and to find that Mr. Allen is entitled to the

Property free and clear of all indebtedness excepting an amount equal to the amortized balance of the indebtedness on the Flanders Property at the date of the Decree of Divorce; and (iv) to reverse the denial of Mr. Allen's claim of unjust enrichment and remand the same to the trial court for reconsideration consistent with the ruling of the Court of Appeals that ownership of the Property reverted to Mr. Allen on July 15, 1999.

DATED: December 19, 2005.

SWENSEN & ANDERSEN PLLC



James G. Swensen, Jr.
Attorneys for Petitioner David J. Allen

CERTIFICATE OF SERVICE

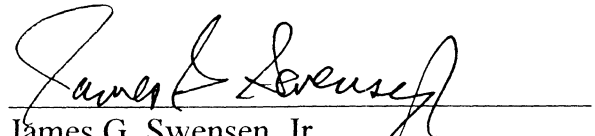
I certify that on December 19, 2005, I caused a true and correct copy of the foregoing REPLY BRIEF OF PETITIONER TO BRIEF OF INTERVENORS to be mailed, postage prepaid, to:

Ronald G. Russell
Matthew J. Ball
PARR WADDOUPS BROWN GEE & LOVELESS, P.C.
185 South State Street, Suite 1300
Salt Lake City, Utah 84111
Telephone: 801-532-7840
Attorneys for Intervenors Chad R. Moore & Melanie S. Moore

Thomas K. Hall
448 East Golden Pheasant
Draper, Utah 84020
Respondent - Pro Se

Bruce J. Nelson, Esq.
NELSON CHRISTENSEN & HELSTEN
68 South Main Street, Suite 600
Salt Lake City, Utah 84101
Attorneys for Respondent Homecomings Financial Network, Inc.

Sarah Satterfield Allen
130 Glenburnie Lane #1-104
Durham, North Carolina 27704-3072
Third-Party Defendant - Pro Se



James G. Swensen, Jr.
Attorneys for Petitioner David J. Allen